IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 1054 OF 1997
IN
WRIT PETITION NO. 2004 OF 1996

1. Deputy Commissioner of Customs)
Group VIA, New Custom House,)
Bombay-400 038.)

2. Commissioner of Customs,)
New Custom House, Bombay-400 038.)

3. Union of India.)...Appellants.

Versus

M/s. Mayur Chemicals,)
a firm registered under the Indian Partnership Act,1932)
and carrying on business at 77/78, Ashok Chambers,)
Devji Ratansey Marg, Mumbai-9.)..Respondents

Mr. S.S. Pakale with Mr. Y.R. Mishra for the appellants.
Ms. Aarti Sathe, instructed by Mr. N.S. Thacker, for the respondents.

CORAM: **R.M. LODHA &**
ANOOP V. MOHTA, JJ.

DATE: **JANUARY 24, 2006**.

ORAL JUDGMENT (Per R.M. LODHA,J.)

This appeal is directed against the judgment of the learned single Judge dated 15th October, 1996. By the said judgment, the learned single Judge directed the present appellants to refund to the present respondents the sum of Rs.12,30,000/- together with the amount of Rs.20,000/- deposited by the respondents herein by way of pre-deposit with interest at

the rate of 12 per cent per annum from the date of auction sale within four weeks from the date of the judgment, subject to the respondents filing an undertaking that they will refund the amount to the present appellants with interest at the same rate in case it is so ordered by the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT).

2. In the year 1984, the present respondents imported polyester zipper chains and sought clearance of the said goods under Import Licence No.2990390. The Deputy Collector, Customs, by his order dated 30th December, 1985, held that import licence was not valid and accordingly ordered confiscation of the goods under Section 111 (d) of the Customs Act, 1962. The said order came to be challenged in appeal before the Collector of Customs (Appeals) and the matter was remanded back to the Deputy Collector. We do not deem it necessary to refer to all such orders. Suffice it to say that ultimately by the order dated 4th October, 1995, the Commissioner of Customs (Appeals) held that the import licence was valid for the goods imported by the present respondents. The Commissioner of Customs (Appeals) also directed that the goods should be allowed clearance under the said import licence. The present appellants preferred appeal before the CEGAT challenging the order dated 4th October, 1995 and prayed for stay of the order. CEGAT dismissed the application for stay on 13th March, 1996. The present respondents then sought clearance of the goods but at that time it was noticed that the goods have already been disposed of by the present

appellants. The respondents accordingly called upon the present appellants to pay the sale proceeds. However, despite repeated efforts the present appellants did not hand over the sale proceeds. The present respondents filed writ petition in this Court and, as already indicated above, the learned single Judge ordered refund of the sale proceeds with the amount of pre-deposit along with interest.

3. We are informed that the appeal filed by the present appellants before the CEGAT is still pending. That was the position when the learned single Judge disposed of the writ petition.

4. Mr. S.S. Pakale, the learned counsel for the appellants, could not justify the reason for withholding the amount of sale proceeds by the appellants. As a matter of fact, it was conceded by the then advocate appearing for the department before the learned single Judge that the present appellants have become entitled to refund of the sale proceeds but he argued that the refund should not be permitted until the appeal was finally decided by CEGAT.

5. Time and again the Courts have held that mere filing of an appeal does not result in grant of automatic stay order. In *Dhampur Sugar Mills Limited* vs. *Collector of Central Excise, Moradabad and others*, 1986 (25)

Excise Law Times 488 (All.), the Division Bench of the Allahabad High Court observed thus:

> "In view of the fact that mere filing of an appeal does not result in staying the proceedings, it did not entitle the respondent to refuse to refund the amount which it was bound to do on account of the allowing of the appeal on 28th June, 1984. Therefore, we are unable to uphold the contention of the Counsel appearing for the respondents. Till a stay order was obtained by the respondents, mere filing of the appeal before the Tribunal did not result in granting an automatic stay order in favour of the respondents. If the respondents so desired, they should have prayed for the stay of the order of the Appellate Collector, in the absence of which the actual position of the law appears to us to be that the petitioner is entitled to obtain the amount of Rs.79,493.97. We accordingly direct the respondents to refund the amount of Rs.79,493.97 within a month from today, unless the respondents are able to obtain a stay order within this period. Subject to the above observations, this writ petition is allowed."

6. The learned single Judge of this Court in the case of *Shree Krishna Woollen Mills Pvt. Ltd.* vs. *Union of India*, 1990 (47) Excise Law Times 320 (Bom.) held thus:

> "2. Hearing rival submissions of Mr. Seervai for the petitioners, and Mr. Desai for the respondents, I see no good reason why the petitioners should not be permitted to have the benefit of the appellate order dated 31st December, 1984 and consequently to the refund of the difference due to them thereunder. Learned Counsel Mr. Desai submitted that against the appellate order, the respondents have filed appeal/appeals to the Tribunal (C.E.G.A.T.). Now, even assuming that to be so, mere filing of an appeal cannot prevent or debar the petitioners from obtaining the refunds presently due to them under the appellate order of 31st December, 1984. Besides, Mr. Seervai for the petitioners states that the petitioners

> are ready and willing to give an undertaking to this Court to the effect that in the event of the respondents' appeal/appeals to the Tribunal being allowed, the petitioners will, within sixty days of the receipt of the Tribunal's order, repay the amounts in the meanwhile refunded to them under the appellate order dated 31st December, 1984. This undertaking protects the interests of the respondents, in the event of their appeal/appeals being allowed by the Tribunal."

7. In the light of the settled legal position, we find that the order passed by the learned single Judge does not suffer from any legal infirmity warranting interference by us in appeal.

8. The learned counsel for the appellants then submitted that the interest which has been awarded by the learned single Judge is on the higher side and deserves interference. We are not impressed by the submission of the learned counsel.

9. The present respondents became entitled to the sale proceeds in the year 1995 but the said amount has been unjustifiably withheld. The rate of interest at that time was not less than 12 per cent.

10. We find no justification to interfere with the impugned order.

11. The appeal is dismissed with no order as to costs.

(R.M. LODHA, J.)

(ANOOP V. MOHTA, J.)